IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15/03/2004

CORAM

The Honourable Mr. Justice K.GOVINDARAJAN
and
The Honourable Mr. Justice N.KANNADASAN

L.P.A.No.210 of 1999

The Municipal Corporation-
of Coimbatore by its Commissioner,
(Coimbatore Municipality, 1st defendant
was constituted as a Corporation under
Act, 25 of 1981.) ... Appellant

-Vs-

Govindasamy Naidu Hospital,
(K.G.Hospital) by its
Govindasamy Naidu Trust,
rep. by its Managing Trustee,
K.Govindasamy. ... Respondent

Prayer: Appeal against the Judgment and decree dated 21.7.1998 in A.S.No.342 of 1985 and A.S.No.588 of 1986 on the file of this Court.

!For Appellant : Mr. G. Masilamani
for Mr.R.Sivakumar
^For Respondent: Mr. S.S. Sundar

:ORDER

N.KANNADASAN,J.

The appellant herein is the appellant in A.S.No.342 of 1985 and respondent in A.S.588 of 1986 and defendant in the suit. The respondent herein is the respondent in A.S.No.342 of 1985 and appellant in A.S. No.588 of 1986 and the plaintiff in the suit.

2. The suit is filed by the plaintiff viz., Kovindasamy Naidu Hospital, which is administered by K.Govidasamy Naidu Medical Trust (hereinafter called as the Trust), which is a public Charitable Trust constituted under the deed of Trust dated 27.3.1974. The Trust was found to serve the public by providing medical relief to the general public, by establishing Hospital, Surgical Homes, Nursing Homes etc. The plaintiff comes

within the scope of definition of Section 86(e) of the Tamil Nadu District Municipalities Act,1920 (hereinafter after called as the Act), by construing it as Charitable Hospital and hence eligible for exemption from payment of the property tax. However, the said benefit was not extended to it by the defendant in spite of repeated pleas. In fact, the plaintiff has availed the exemption from payment of property tax in pursuance of the Coimbatore Municipal Council Resolution 693 dated 18.6.1980 with effect from 1.4.1980 and by later resolution No.1121 dated 23.7.1980, the defendant has cancelled the earlier resolution for mala fide and extraneous reasons. The said cancellation is also illegal as no opportunity of hearing was given before the said cancellation, which is violative of the fundamental principles of natural justice. In spite of several representations submitted by the plaintiff, no order was passed by the defendant even though the plaintiff satisfies the scope and ambit of Section 86(e) of the Act and Section 123 (e) of the Coimbatore City Municipal Corporation Act, 1981. In fact, the Trust has been recognised as Charitable Institution for the purpose of the provisions of the Income-tax Act, 1961 and availed Customs Duty exemption for the purchase of medical equipment. Due to inaction on the part of the defendant, the suit is filed to declare the plaintiff as Charitable Trust to seek exemption from the property tax and to direct the defendant to repay the amount already collected by way of property tax for the period subsequent to 1.4.1978 and to grant permanent injunction restraining the defendant from recovery of any arrears.

3. The suit was resisted by the defendant contending that the property tax was imposed after carrying out inspection of the premises and during such inspection, it came to light that rents are collected for the rooms and fees also collected from the patients. It is also contended that the plaintiff hospital cannot be construed as Charitable Hospital within the meaning of the relevant provisions of the Act referred to above and the cancellation of the earlier resolution in withdrawing the tax exemption was done in accordance with law and the suit is barred by limitation.

4. The suit was decreed in respect of declaration, injunction and for recovery of a sum of Rs.36,002.80, but however, relief was not granted in respect of the tax which was collected for the period prior to 18.6.1977 as barred by limitation.

5. Aggrieved against the Judgment and decree of the trial court, the appellant/defendant filed A.S.No.342 of 1985 and the plaintiff/ respondent filed A.S.No.588 of 1986 in respect of the portion of the decree which was not granted. Before the learned single Judge, the appeal filed by the plaintiff in A.S.No.588 of 1986 was not pressed and accordingly the same was dismissed as not pressed. However, the appeal filed by the appellant/defendant in A.S.No.342 of 1985 was dismissed on merits by a Judgment and decree dated 21.7.1998. Against which the defendant has filed the present L.P.A.

6. The learned senior counsel Mr.G.Masilamani, appearing for the appellant/defendant has contended that the plaintiff-hospital is receiving income and collecting rent for the rooms and the patients are being charged by way of fees and as such the exemption claimed by the plaintiff for the payment of property tax cannot be granted. He further contended that the fact of

availing exemption under the Income-tax Act as well as the payment of Customs Duty will not ensure benefit in respect of payment of property tax, since the relevant provisions of the said Acts cannot be treated on par with the provisions pertaining to the grant of exemption of payment of property tax under the above said two Acts. The learned senior counsel further contended that the plaintiff has not established the fact that it is a Charitable Hospital within the meaning of the Act, except pleading in this regard in the plaint as well as the assertion during the oral evidence adduced on behalf of the plaintiff. The learned single Judge of this Court as well as the trial judge have overlooked the material evidence on record, more particularly the evidence adduced before the trial court which discloses that the hospital is not providing free treatment even to 10% of the patients.

7. Per contra, the learned counsel for the respondent/plaintiff has submitted that the trial court as well as the appellate court have rightly found that the plaintiff is a Charitable Hospital within the meaning of the Section 83 (e) of the Act and 123 (e) of the City Municipal Corporation Act. The learned counsel for the respondent contended that a perusal of the Trust deed discloses that the main object of the Trust is to promote, establish, administer the hospitals, Surgical Homes and Nursing Homes for providing medical relief to the needy people. It is further contended that none of the trustees are enjoying any profit of the hospital and the necessary audited statement was marked as Exhibits before the trial court. It is contended that the Trust has been recognised as Charitable Institution for the purpose of the provisions of the Income tax Act, 1961 and availed Customs Duty exemption for the purchase of certain medical equipment. He has further contended that the hospital was rightly granted exemption initially by a resolution No.693 dated 18.6.1980 with effect from 1.4.1980 but subsequently for mala fide and extraneous reasons the same was cancelled by subsequent resolution No.1121 dated 23.7.1980.

8. The point for consideration is whether the plaintiff/respondent is entitled for the exemption from the payment of property tax within the meaning of Section 83(e) of the Tamil Nadu District Municipalities Act, 1920 and Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 ?

9. We have considered the rival contentions of the parties. Before we proceed to deal with the legal submissions with reference to the relevant provisions of the Act, it would be useful to find out as to whether the plaintiff/respondent has proved its case to the effect that it is a Charitable Institution within the meaning of the Act. A perusal of Exhibit A-12 dated 14.5.1979, which is an application submitted by the plaintiff/respondent discloses several particulars about the hospital. In the said application, Ex.A-12 it is admitted that the details relating to the number of patients, out-patients as well as inpatients who have been treated free of charges or at concessional rates, have not been maintained. The relevant portion is extracted here under:

"At the beginning detailed records about the patients who were treated free or at concessional rates were not maintained. We wanted to avoid unnecessary paper work, expenditure on employment of non-medical personnel,

and delay in treatment and discharge of the patients. ... There are no standard procedure or guidelines of maintenance of Hospital accounts and patient statistics. We had to learn by trial and error, and we now have detailed statistics. .....

Most patients knowing that the Hospital is run by a Charitable Trust volunteer to pay their fees as donations to the Trust. As long as the amount they pay equal or more than the amount payable as fees to the hospital, we receive their payments as donation. Many times the donation amount was much higher than the fees, and the Trust and Hospital gained by accepting as donation....

It has also been our endeavour to charge a patient at least a nominal fee, because anything received grant is not valued...

A perusal of the above discloses that most of the patients volunteer to pay their fees as donations to the trust. If the said statement of the plaintiff is accepted, it should have produced documents in support of the same before the trial Court. Inasmuch as it is specifically mentioned that, on several occasions, the donation amount was higher than the fees, the plaintiff would have maintained registers indicating what is the amount earmarked for donation and what is the amount earmarked for fees. In the absence of production of any convincing documentary evidence, we do not agree that what ever amount paid by the patients are received as donations by the trust.

10. Further, Ex.A.12 furnishes the details relating to the number of patients, who have obtained full concession of fees and who have obtained partial concession of fees and who have paid their charges in full. A perusal of the concession extended by the hospital to the patients with the total fees due to the hospital for the period from 197 7-78 indicates that the concessions so extended did not exceed more than 25%. If we consider that the above details reflects the true facts, the fact of extending concession to the patients is far less than the actual amount representing the fees due. Similarly, the figures pertaining to number of patients treated free of charge is far less when compared to the patients who were treated on collection of fees. One of the enclosures to Ex.A-13 dated 7.6.1980 which is a resolution of the Trust discloses that the desire of Sri. K.Govindasamy Naidu, founder trustee for providing absolute free medical treatment should be achieved and at least 25% of the patients both in-patients and out-patients should be treated at concessional rates and token fee could be charged. Thus, even as per the plaintiff's resolution, it is admitted that the hospital would endeavour to collect concessional and token fees to the extent of 25% of patient only, which suggests that even the said minimum percentage of the patients are not given free treatment in entirety. 11. A perusal of the evidence adduced by P.W.1 during his crossexamination discloses that the plaintiff hospital has been used to collect room rents. He has further deposed that out of 86 rooms, only one room is earmarked for poor patients. He has also admitted that the hospital has not displayed either in its name board or otherwise that it would give free treatment for poor people. In the light of the above evidence also, we are not convinced that the hospital has

to be construed as a charitable hospital within the meaning of the relevant provisions of the Act.

12. The trial Court by referring to the order granting tax exemption by the Income Tax Department under Ex.A.28 and A.29; Audited statements produced in Ex.A.26 and A.27; Duty exemption granted under Customs Act in Ex.A.31 to A.34 has come to the conclusion that the plaintiff is a charitable hospital. The trial Court has overlooked the facts that in Ex.A.31 which contains the condition for grant of Customs Duty exemption, it is clearly indicated that the hospital should provide free treatment to the out-patient at least to the extent of 40%. A further condition is also imposed that the hospital should provide free treatment to all the in-patients whose monthly income is less than Rs.300/-. It further proceeds that 10% of the beds should be provided to the in-patients whose monthly income is below Rs.300/-.

13. Even though the trial Court has referred to the above Exhibit, it has miserably failed to take note of the oral evidence deposed by P.W.1 as well as Ex.A.12, which makes it clear that the conditions set out in Ex.A.31 are not satisfied. As regards the tax exemption granted by the income tax department and the customs department, the provisions contained in the said Act cannot be equated on par with the provisions under which the plaintiff/respondent is claiming tax exemption.

14. Section 2(15) of the Income Tax Act, 1961 proceeds as here under: "A Charitable purpose includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility."

The scope of the above provision discloses that it has wider meaning, more particularly when a reference is made about the advancement of any other object of general public utility. Similarly, Section 25 of the Customs Act, 1962 enables the Central nment to exempt payment of duty on such conditions as may be prescribed, if the central Government satisfies itself to pass an order. However, Section 86(e) of the District Municipalities Act, and 123(e) of the Coimbatore City Municipal Corporation Act proceeds as follows: "Charitable hospitals and dispensaries, but not including residential quarters attached thereto".

Thus, in the absence of any similarity of the other provisions when compared with the provision under which the property tax exemption is sought, the trial Court is not correct in accepting the plea of the plaintiff. The trial Court has further proceeds on the basis that the trust has been established for serving public and it was not established for the benefit of the founders or the trustees. The above reasoning of the trial Court is not sustainable inasmuch as the plaintiff has not established that it is a charitable hospital within the meaning of the Act and the recitals in the Trust Deed cannot be considered as a conclusive proof.

15. Similarly, the appellate Court has confirmed the findings of the trial Court by overlooking several aspects as stated already. The learned Judge by referring to Ex.B.2 that there is no column pertaining to "Rent" has come to the conclusion that the hospital is a charitable one. A reference is

made to the effect that the hospital can be construed as a charitable hospital on the basis of the registers and Ex.B.2 receipt. The learned Judge has also accepted the other reasoning adduced by the trial Court for the grant of decree. The learned Judge has overlooked the evidence deposed by P.W.1, the various details set out in Ex.A.12 and A.13, which suggest that the hospital is collecting rent and free treatment is not given even to the extent 10% patients and only an endeavour is made in future to give treatment that too at concessional rates to an extent of 25% of the patients only. The trial Court as well as the appellate Court have not discussed about the evidence of P.W.1 as well as contends of Ex.A.12 and A.13. 16. As regards the grant of exemption which was ordered in Resolution No.693 dated 18.06.1980 and subsequent cancellation in Resolution No.1121 dated 23.07.1980 is concerned, no motive was established as against the appellant/defendant Corporation. It cannot be suggested that the appellant do not have powers to withdraw the earlier resolution when it is noticed at a later date that a hospital did not satisfy the requirement of all charitable hospital. Moreover no prayer is sought for setting aside the resolution dated 23.07.1980 in the suit. 17. The trial Court as well as the appellate Court have failed to take into account the power of taxation of a municipal authority/ Corporation. Every municipality is a local self-Government and in order to sustain itself a power of taxation has been delegated to municipal bodies. The taxes are local taxes for local needs. Such tax must obviously differ from one municipality to another. It is impossible for the Legislature to pass statute for the imposition of such taxes in local areas. In a democratic set up, the municipality which need the proceeds of these taxes for carrying out the projects to the public, it would be but proper to leave to these municipalities the power to impose and collect taxes. The local authorities do not act as Legislature when they impose tax, but they do so, as an agent of State Legislature. The power and extent of these powers must be found in the statute which create them such powers. Local bodies being subordinate branches of Governmental activities or democratic institutions managed by the representatives of the people. They function for public purposes. They bear the burden of the Government affairs in local areas as they are required to carry on the required local selfGovernment.

18. In the light of the delegation of taxation power to the local bodies, the Supreme Court made a clear distinction with regard to the ruling arising out of income tax in its decision rendered in Municipal Corporation of Delhi Vs. Children Book Trust (1992)3 SCC 390). The relevant portion is extracted here under:

"The rulings arising out of Income Tax Act may not be of great help because in the Income Tax Act "charitable purpose' includes the relief of the poor, education, medical relief and the advancement of any other object of general public utility. The Advancement of any other object of general public utility is not found under the Delhi Municipal Corporation Act."

After observing as above, the Apex Court has held that the municipal tax being an annual tax, the liability of tax must be determined with reference to each year. It is also observed that the society claiming exemption will have to show that it fulfils the condition for exemption each year. It is finally

concluded therein that the test to be applied is not merely qualitative but quantitative as well.

19. The Supreme Court in its decision rendered in Indian Chamber of Commerce Vs. C.I.T., West Bengal II, Calcutta (1976) 1 SCC 324), while holding that the income of the Indian Chamber of Commerce as taxable has observed as follows: "The interpretation of the provision must naturally fall in line with the advancement of the object. Of course, there are borderline cases where it becomes difficult to decide at first sight whether the undertaking which yields profit is a deceptive device or a bona fide adventure which results in nominal surplus although substantially intended only to advance the charitable object."

If we apply the above interpretation, then the respondent/plaintiff do not fall within the scope of the relevant provision of the Act to claim property tax exemption.

20. The Supreme Court in its decision rendered in Carmel Book Stall Vs. Deputy Commissioner of Sales Tax (1994 Supp(3) Supreme Court Cases 241), has held that the onus of proof viz., the profit was utilised for charitable purposes rest with the individual who claims it. Admittedly, in the present case, the said burden of proof was not discharged by the plaintiff/respondent.

21. Similarly, the Supreme Court in its decision rendered in Indian Red Cross Society Vs. New Delhi Municipal Commit
4 (SC)), has held that the statute exemption from property tax under the said Act was not available to a charitable society i
building is not self-occupied, but is rented out even if such rental income is used for charitable purposes. In the present
already, the plaintiff hospital is collecting rent as admitted by P.W.1 and as such it cannot claim exemption.

22. The learned counsel for the respondent strongly relies upon the observation of Supreme Court in its decision rendered in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association (AIR 1980 SC 387), to the effect that the activity involved in carrying out the charitable purpose must not be motivated by a profit objective, but it must be undertaken for the purpose of advancement or carrying out the charitable purpose. By relying the above observation, the learned counsel has contended that inasmuch as the ultimate object of the plaintiff/respondent is nothing but a charitable purpose, it is entitled for exemption and the mere collection of rent as well as the charging of fees from the patients cannot be construed that the hospital is not a charitable one. We do not agree with the argument of the learned counsel for the respondent in view of the fact that the Supreme Court in the said case has rendered a finding that the activity of obtaining licences for import of foreign yarn and cloths and for the purchase of indigenous yarn was not an act of profit. It was further held that the predominant activity was for the promotion of Commerce and Trade. In the light of the specific finding as stated therein,

the observation, which was relied upon by the learned counsel for the respondent has no application to the facts of the present case.

23. The learned counsel for the respondent also relied upon the decision of the Supreme Court in Christian Children Fund Inc. Vs. Municipal Corporation of Delhi and Others (1994)4 SCC 337). In our opinion the said decision is not helpful to the respondent/defendant, in view of the fact that the Supreme Court has rendered in the said Judgment by taking out of the fact that there was no dispute that the said organisation is a charitable organisation and the dispute involved was denial of exemption on the only ground that the premises in question was used by the said organisation for its office. Hence, the above Judgment has no application to the case on hand.

24. Similarly, the other decision cited by the learned counsel for the respondent viz., Victoria Technical Institute Vs. Additional Commissioner of Income Tax, Madras and another (AIR 1991 SC 997), and Commissioner of Income T ax, Bombay City, Bombay Vs. Breach Candy Swimming Bath Trust (AIR 1955 BOMBAY 250) are not applicable to the facts of the present case in view of the fact that the said decisions were rendered under the provisions of the income tax.

25. Reliance is placed by the learned counsel for the respondent the decision of this Court rendered in S.N.R.Sons Charitable Trust, Coimbatore Vs. The Commissioner, Coimbatore City Municipal Corporation, Coimbatore (1993(2) LW 100), which has no application to the present case in view of the reasons that the Division Bench has considered the issue therein as to whether the benefit of exemption can be denied on the sole ground that the payments made by the patients to the hospital should be construed as rent or not and on facts it was held that the payments made therein cannot be treated as rent. In the instant case, there is a specific admission on behalf of the plaintiff in the oral evidence of P.W.1 that rents are being collected. Further, in the above mentioned decision on facts it was held that the hospital as a charitable hospital.

26. For the foregoing reasons, we are of the opinion that the plaintiff/respondent cannot be construed as a charitable hospital within the meaning of Section 86(e) of the District Municipalities Act,1920 and Section 123(e) of the Coimbatore City Municipal Corporation Act, 1 981. Therefore, the Judgment and the decree of the appellate Court confirming the Judgment and decree of the trial Court is set aside and the suit is dismissed.

27. The above Letter Patent Appeal is allowed. However there will be no order as to costs.

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